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recent decision in [*Alleyne v. United States*, 133 S. Ct. 2151 \(2013\)](#).^{5/} But nowhere in Sanders’s motion does he make the threshold showing that the Sentencing Commission lowered his guidelines’ range. Thus, the Court lacks the authority to reduce Sanders’s sentence under [§ 3582\(c\)\(2\)](#).

Even if the Court considered the merits of Sanders’s *Alleyne* claim, his argument still fails. In *Alleyne*, the Supreme Court held that “[a]ny fact that, by law, increases the penalty for a crime is an ‘element’ that must be submitted to the jury and found beyond a reasonable doubt.”^{6/} Here, the Court found that Sanders was subject to the Armed Career Criminal Act (“ACCA”)^{7/} because he had committed three violent felonies. The Sixth Circuit upheld that determination.^{8/} Now, Sanders says that under *Alleyne*, the Court should have submitted to the jury the issue of whether his prior convictions constituted predicate offenses under the ACCA.^{9/} But *Alleyne* did not disturb *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), which authorizes a district court to apply an enhanced sentence based upon its finding of applicable prior convictions.^{10/} Thus, Sanders’s *Alleyne* argument fails.

Because Sanders’s *Alleyne* argument fails, and because Sanders has no constitutional right

^{5/}Doc. [132](#) at 7.

^{6/}[*Alleyne v. United States*, 133 S. Ct. 2151, 2155 \(2013\)](#).

^{7/}[18 U.S.C. § 924\(e\)](#).

^{8/}Doc. [101](#).

^{9/}Doc. [132](#) at 7.

^{10/}“In *Almendarez-Torres v. United States*, 523 U.S. 224, 118 S.Ct. 1219, 140 L.Ed.2d 350 (1998), we recognized a narrow exception to this general rule for the fact of a prior conviction. Because the parties do not contest that decision’s vitality, we do not revisit it for purposes of our decision today.” [*Alleyne*, 133 S. Ct. at 2173 n.1](#).

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to counsel in a § 2255 proceeding,^{11/} the Court also denies Sanders's motion to appoint him counsel.

IT IS SO ORDERED.

Dated: August 6, 2013

s/ *James S. Gwin*
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE

^{11/}See [Rauter v. United States](#), 871 F.2d 693, 695 (7th Cir. 1989).